

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Kenya Gazette Supplement No. 14 (West Pokot County Bills No. 5)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

WEST POKOT COUNTY BILLS, 2017

NAIROBI, 17th October, 2017

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**THE WEST POKOT COUNTY ASSEMBLY STAFF CAR LOAN
AND MORTGAGE BILL, 2017**
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**THE WEST POKOT COUNTY ASSEMBLY STAFF CAR LOAN
AND MORTGAGE BILL, 2017****A Bill for**

**AN ACT of the County Assembly of West Pokot to establish Car Loan
and Mortgage Fund for staff of the West Pokot County Assembly
and for connected purposes**

ENACTED by the County Assembly of West Pokot, as follows –

PART I – PRELIMINARY**Short title**

1. This Act may be cited as the West Pokot County Assembly Staff Car Loan and Mortgage Act, 2017.

Interpretation

2. In this Act, unless the context otherwise requires—

“applicant” means staff of the County Assembly of West Pokot

“borrower” means a person in receipt of car loan and or mortgage out of the fund

“committee” means any of the Committee established under this Act;

“financial year” means the period of twelve months ending on the 30th June in each year;

“member of the Scheme” means the West Pokot County Assembly employee on permanent and pensionable terms;

“staff” means any employee of West Pokot County Assembly employed on permanent and pensionable terms;

“valuer” means a person registered as a valuer under the Valuers Act (Cap. 532)

PART II – ADMINISTRATION**Establishment of the Fund**

3. There is hereby established a Fund to be known as the West Pokot County Assembly Staff Car Loan and Mortgage Act, 2017.

Object of the Fund

4. The object and the purpose of the Fund shall be—

- (a) to provide a loan scheme for purchase of vehicles by staff; and

- (b) to provide housing loan facilities to staff for the purpose of either purchasing or constructing residential houses
- (c) develop housing units for sale and rental for rental by staff; and
- (d) raise funds for the implementation for the objectives stated under Subsections 1. and (2) of this Section.

Sources of the Fund

5. (1) The sources of the Fund shall consist of—

- (a) any amounts that may from time to time be appropriated by the County Assembly;
- (b) all sums of money received by or falling due to the Fund in respect of loans made there from and the interest on these loans;
- (c) all sums of money borrowed by the Fund with the approval of the County Assembly for the purpose of exercising any of its functions or discharging any of its obligations;
- (d) requisite funds from the national treasury through the Medium Term Expenditure Framework (MTEF) Budget;
- (e) agreement between financial Institutions and the individual government agency/organ within agreeable framework to both parties;
- (f) all other sums of money that may in any manner become payable to or vested in the Fund including grants and donations;

Financial Partnership

6. (1) The Fund may enter into viable financing or development partnership with a person or legal entity for the purposes of implementing the objectives and purposes of the Fund.

(2) The Committee may, by Notification to the County Treasury, designate a bank to act as the financial agent of the Fund and the bank so designated shall be subject to the terms and conditions of any agreement for the purpose between West Pokot County Assembly and the Bank.

Administrator of the Fund

7. (1) The Administrator of the fund shall—

- (a) supervise and control the administration of the Fund;
- (b) may impose conditions on the use of any monies in the Fund and may also impose reasonable restriction or other requirement concerning such use;

- (c) shall cause to be kept books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;
- (d) prepare, sign and transmit to the Auditor-General and county assembly financial statements in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Board may from time to time in accordance with the Public Finance Management Act; and
- (e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General.

(2) Every statement of account prepared under this Act shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

PART III—APPLICATION FOR CAR LOAN

Establishment of Loans Management Committee

8. (1) There is established a committee to be known as the Car Loan Management Committee, which shall consist of—

- (a) administrator of the Fund who shall be the chairperson to the committee;
- (b) officer in-charge of procurement department who shall be the secretary to the committee;
- (c) officer in-charge of finance department;
- (d) Deputy officer in-charge of litigation and drafting services;
- (e) officer in-charge of payroll;
- (f) chairperson of staff welfare committee; and
- (g) officer in-charge of fiscal analysis.

(2) The meetings of the Committee shall be convened by the chairperson or in the absence of the chairperson; any member appointed by the chairperson shall chair the meeting and shall be convened at such times as may be necessary for the discharge of the Committee's functions.

(3) The quorum for meetings of the Committee shall be the chairperson and any other three members.

(4) The decision of the committee shall be by a simple majority and in the case of a tie, the chairman shall have a casting vote.

(5) The Committee shall be responsible for the general administration and management of the affairs of the Fund and specifically, the Committee shall be responsible for—

- (a) making recommendations with respect to the conditions under which car loan shall be granted or repaid under this Act
- (b) processing applications for the granting of Car loans to Members of the County Assembly subject to the provisions of any agreement relating to the provision of the loan.
- (c) receiving and administering the resources of the Fund;
- (d) supervising the day-to-day running of the Fund
- (e) liaising with financial institutions (if any) to set up a revolving fund for the disbursement of the loans; and
- (f) furnish such additional information as it may deem to be proper and sufficient for the purpose of examination and audit by the Auditor-General; and
- (g) prompt accounting and transparent volunteering of information on the implementation, progress and statements of accounts relating to the fund and transmit it to the Auditor-General and County Assembly;
- (h) approve all housing development and financing proposals;
- (i) enter into agreement with persons or legal entities for the purposes of providing services to the Fund;
- (j) establish management guidelines and engage such staff as may be necessary to assist the committee and the Officer Administering the Fund; and
- (k) such other duty as may be directed by the Board for the purposes of the proper management of the Fund.

Operation of the fund

9. (1) A staff who wishes to apply for car loan from the Fund shall present to the committee a duly completed form prescribed by the Committee.

(2) The officer administering the Fund shall satisfy himself of the applicant's financial status and capacity to repay the loan applied for and where so satisfied shall forward the application to the committee for consideration and approval.

(3) If the Committee approves the application, the applicant shall enter into a hire purchase agreement in such form as the Committee may prescribe.

Conditions for disbursement of funds

10. (1) A loan approved under section 9 shall be released from the Fund in such manner, taking into account the security of the funds, as may be prescribed by the Committee.

(2) The log-book of a vehicle subject to a loan from the Fund shall be issued jointly between the West Pokot County Assembly and the member of the Scheme and shall be kept in the custody of the Administrator of the fund until the loan is repaid in full by the member of the Scheme.

(3) A motor vehicle financed under the Fund shall be for personal and private use only;

(4) Motor vehicles older than eight years shall not be considered for financing under this Fund

Temporary release of log-book

11. (1) A log-book kept in custody by the Officer Administering the Fund may be temporarily release to a staff upon application in writing to the Officer Administering the Fund for purposes of renewal by that staff of the necessary licences.

(2) A log-book released under paragraph (1) shall be returned to the Officer Administering the Fund within seven working days from the date of such release.

(3) The Officer Administering the Fund shall acknowledge receipt of the log-book in writing.

Loan amounts

12. (1) The Loan amount that a staff may receive shall be the value of the vehicle that the staff proposes to purchase subject to the maximum amount as set out in the SRC circular

(2) For the purpose of this Act, the value of a new vehicle shall be as quoted on the invoice from supplier whereas the value of a used vehicle shall be as determined by a report from the body known as Automobile Association of Kenya, or the Government department dealing with such matters.

(3) Notwithstanding the provisions of Sub-section (1), there may be advanced from the Fund to a staff of the scheme in additional loan not

exceeding 10% of the value of the vehicle purchased by the staff of the scheme to cater for an overhaul of the engine of the vehicle.

(4) No staff of the scheme shall receive a loan the repayment of which shall result in salary deductions exceeding 30% of the monthly emoluments of the staff of the scheme.

Interest rate

13. (1) A loan granted to a member of the scheme under this Act shall carry an interest rate of three per cent per annum.

(2). One (1) per cent of the interest charged under Sub-section (1) shall be utilized to defray the administrative and managerial expenses of the Fund.

(3). The remainder two per cent of the interest charged under Sub-section (1) shall be accruals to the Fund and shall be utilized for purposes for which the Fund is established.

Repayment Period

14. (1) A car loan granted under this Act shall be repayable within a period of five (5) years or before the borrower attains the age of sixty years, whichever is earlier.

(2) The repayment of either car or mortgage loan shall be through check-off system with the applicant signing an irrevocable instruction form.

Motor vehicle insurance

15. (1) A member of the Scheme shall comprehensively insure any vehicle purchased through the Fund and shall surrender duplicates of insurance documents to the committee for verification.

(2) Where a staff of the scheme is unable to raise the funds required for the initial insurance premium, such funds may be advanced from the Fund subject to an approved limit, but subsequent annual premiums shall be paid by the member of the scheme.

(3) A member of the scheme who is unable to pay the subsequent annual premiums referred to in Sub-section (2), may apply to the committee for a loan which be repaid within a period of one (1) year.

(4) Every loan granted under this Act shall be insured for the benefit of the member of the scheme and the premium in respect of the loan shall be debited to the account of the member of the scheme.

Loan discharge

16. (1) Upon full repayment of the loan, a signed loan discharge certificate in a form prescribed by the Committee shall be issued to the member of the Scheme and a copy thereof shall be forwarded to the Registrar of Motor Vehicles.

(2) The loan discharge certificates shall release the member of the Scheme from any further financial obligation in respect of the loan and shall act as sufficient authority to release the log-book to the member and remove the caveat on the vehicle pursuant to section 10 of this Act.

PART IV—APPLICATION FOR MORTGAGE**Purpose of Mortgage loan**

17. (1) A loan granted under this Section shall solely be utilized for—

- (a) Purchase of a residential house for the occupation of the applicant;
- (b) Improvement of residential house occupied by the applicant;
- (c) Development of a residential house for the occupation of the applicant;
- (d) Purchase of land and development of a residential house for occupation by the applicant;
- (e) Equity release for improvement or development of a residential property; and equity release for improvement or development of a residential property; and

Provided that, a loan granted under these Act shall not be utilized for commercial purposes.

(2) A loan for development of residential property shall be granted at the discretion of the committee to a staff who is in possession of a title deed to the land on which the development is to be carried out.

Maximum funding

18. (1) The funds that may be loaned to a staff under this Act shall be as provided in the SRC Circular...(details and the schedule thereto)

Criteria for Grant of loan

19. (1) The maximum mortgage loan that may be granted under this Act shall be based on;

- (a) on first come first serve basis; and

- (b) the ability to pay and shall be payable by check-off system.

Eligibility

20. Eligibility for a loan under this Act shall be for a civil servant at the county assembly who has been confirmed in employment on a permanent and pensionable provided that any civil servant on contract terms of service shall have unexpired contract period of more than twelve months.

Disbursement of loans for mortgage

21. (1) A mortgage loan granted for the development of residential property shall be released to the borrower in phases in accordance with Sub-section (2) and (3) of this Section.

- (2) The first disbursement of a loan released to a staff shall be:-

- (a) Twenty five *per centum* of the cost of construction:

Provided that the cost of construction shall not exceed the maximum funding under this Act;

- (b) Twice the open market value of the land on which the residential property is proposed to be constructed; whichever is less.

(3) The subsequent disbursements shall be based on the rate of completion of the various phases of development as certified by a valuer, registered as such under the valuers Act (Cap 532) at the cost of the borrower.

Required documents

22. (1) An application for a mortgage loan for construction purposes this Act shall be accompanied by the following documents where appropriate—

- (a) copies of the designs of the proposed residential property duly approved by the relevant county government department within whose area it is to be situated;
- (b) priced bills of quantities in respect of the proposed development; and
- (c) proof of ownership of the land on which the construction is to be carried out.

(2) An application for a loan to purchase a house shall be submitted together with the following documents—

- (a) a certified copy of sale agreement relating to the purchase;
- (b) proof of ownership of (title to) the property by the seller;

- (c) proof of availability of funds specified in S. 18.
- (d) Any other documents that the committee may require for the purpose of determining application.
- (3) An applicant under this Section shall meet any other condition imposed by the committee under this Act.
- (4) A mortgage loan granted under this Act—
 - (a) Shall be funded at the rate of hundred per cent of the value of the property
 - (b) Shall not exceed the maximum loan amount set under S. 18/SRC circular.
- (5) The balance over and above the maximum loan amount under S.18 and all other monies payable including stamp duty, transfer fees and other related charges shall be paid by the borrower.
- (6) The borrower shall be required to deposit the balance under Sub-section (5), with the Fund together with all monies payable as stamp duty and other legal fees.
- (7) The committee may, where it deems appropriate, appoint an advocate to act on its behalf in respect of transactions relating to the property under this Act.

Leasehold property

23. Where the property intended to be purchased through a loan from the Fund is leasehold property, such loan shall be granted where the expiry date of such lease is at least ten (10) years from the date the loan was granted

Repayment of mortgage loan

24. (1) A loan granted under this Act shall be repayable within a period of twenty (20) years or before the loanee attains the age of sixty years, whichever is earlier.

(2) A borrower may give prior authority in writing for his pension dues to be utilized to clear any outstanding debt in case he retires before repaying the loan.

(3) Where property is developed by the Fund for the purposes of tenant purchase, the borrower shall pay a deposit of ten per centum of the value of the property and shall subject to Sub-section (4) be granted a loan of the remaining ninety per centum to be repaid monthly and in accordance to this Act.

Lien

25. (1) The management committee shall have a charge registered on the property financed through a mortgage granted under this Act and shall have the name of West Pokot County Assembly entered in all documents of title for such property.

(2) The borrower shall—

- (a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the mortgage management committee;
- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the committee; and
- (c) provide a transfer deed duly signed by the borrower and a letter authorizing the mortgage management committee to sell the property in case of default in payment.

(3) All residential properties purchased or developed through the Fund shall be constructed of such standards and materials as being acceptable and to which the committee may approve.

(4) During the loan repayment period, the borrower shall:-

- (a) ensure that the property is used for residential purposes ;
- (b) maintain the property in a satisfactory state of repair; and
- (c) not alter or make any structural alteration to the property, carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the approval of the committee.

(5) A staff shall be eligible to two loans either from car loan mortgage loan provided that the loans shall not run concurrently—

- (a) where one is applying for the second benefit or the spouse has benefited before, priority shall be given to those who have never benefited; and
- (b) the two loans shall not exceed the staff's current entitlement at the time of application.

(6) All legal documentation and disbursement of funds shall be supervised by the committee.

Mortgage insurance

26. (1) A borrower shall take and maintain a life insurance policy and a fire insurance policy with an insurance firm approved by committee, whose cost shall be paid out of the Fund, as a group cover, and debited in the borrower's account.

(2) Every beneficiary of a house under construction by the Fund shall take mortgage protection cover for provisional sale price of the property.

Safe custody of document

27. The original documents relating to property financed by loan from the Fund shall be kept in safe custody by the officer administering the Fund.

Protection of government Interest

28. The committee shall be entitled to do everything lawful and necessary to protect the interest of the West Pokot County Assembly in the property in respect of which a loan is granted.

Default in repayment

29. (1) where a borrower who has benefited from sale of a house constructed through the Fund defaults in repayment of the loan for a period of three consecutive months, committee shall repossess and sell the property to another deserving staff.

(2) where a borrower leaves service, the borrower shall continue to service the loan at the same terms and conditions as set out in this Act;

provided that where the borrower defaults for a period of four months in repayment, the interest shall be converted to prevailing commercial rates.

(3) where a borrower leaves service on disciplinary grounds, resigns before serving for a period of ten years, the committee may grant the borrower a maximum period of four months to repay the full outstanding loan or permit the borrower to repay the outstanding loan at the prevailing market rate and on such other terms and conditions as the committee may from time to time prescribe.

(4) where the commercial rates are applicable and the borrower is in default for a period of four months, the Fund may call in the loan and sell the charged property by public auction or private.

Sale of loan property

30. (1) No person shall sell or in any way transfer any property acquired from or through the Fund under this Act unless —

- (a) a period of not less than eight years has expired from the date,
 - (i) of the payment of the full purchase price of the property together with such interest as may be due; or
 - (ii) of the payment in full of the loan advanced by the Fund together with such interest as may be due.
- (b) The sale or transfer has been approved by the committee.

PART V—GENERAL PROVISIONS

False representation

31. (1) Any person who makes or causes to be made a false representation induces or attempts to induce the Committee to grant a loan is liable on conviction to a fine up to a maximum of five hundred thousand or imprisonment for a term not exceeding six months, or to both.

(2) Nothing in this section precludes the instituting of any other proceeding under any other written law.

Power to make Regulations

32. (1) The Committee may, with the approval of the County Assembly, make Regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular, may make Regulations—

- (a) providing for the administration and management of the resources of the Fund;
- (b) requiring a member of the scheme to whom a car loan and or mortgage is made under this Act to furnish such information as may from time to time be required by the Committee;
- (c) prescribing the basis on which car loan and mortgage may be obtained;
- (d) prescribing the procedure to be followed prior to the obtaining of car
- (e) loan and or mortgage for payment of the amount due together with
- (f) any interest thereon; and
- (g) prescribing anything which may be or is required to be prescribed under this Act.

MEMORANDUM OF REASONS AND OBJECTS

The Bill has been submitted by the West Pokot County Executive Committee Member responsible for Finance, and it seeks to establish a Loan and Mortgage Fund for the Staff of the West Pokot County Assembly and for connected purposes.

NG'OLESIA THOMAS,
Vice Chairperson, County Budget and Appropriations Committee.